

CURRENT DEVELOPMENTS

A Financial Crisis or Something More?

A turning point for the Inter-American Commission
on Human Rights

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On May 23, 2016, the Inter-American Commission on Human Rights (IACHR) published a press release giving notice of an immediate financial crisis leading to the “suspension of hearings and imminent layoff of nearly half its staff.” The IACHR asserted that this situation arose as a result of the Organization of American States (OAS) member states’ failure to support the fulfilment of the Commission’s mandate. The IACHR’s budget deficit is, nevertheless, not an isolated event. States like Argentina, Chile, Guatemala and Mexico have

asserted their dissatisfaction with the work of the IACHR, to justify their lack of financial contribution. Therefore, the system, as a whole, including both the role of states and of the Inter-American institutions needs to be reimagined.

This situation of financial hardship is deeply connected to a broader issue of reforming the IACHR, as debated in an OAS Special Working Group on “IACHR Strengthening Process” between 2011 and 2012. The Special Working Group included in its agenda the financial strengthening of the Inter-American Human Rights System, among other topics. The agenda of the Special Working Group has been criticized for mainly representing the interests of the member states, and the process has been depicted as an attempt to control the IACHR (see also the position of human rights groups on this issue). The Special Working Group released its report in January 2012, and although there was a considerable budget increase, this did not ensure the financial stability of the IACHR.

The 2012 Strengthening Process

During 2010, the IACHR recommended that member states adopt certain ‘precautionary measures’ in order to comply with human rights standards. However, these measures requested the closure of several contested development projects, due to certain breaches of human rights. The proposal of these measures, as well as other IACHR activity, provoked a backlash from member states, as both the Brazilian case of Belo Monte and the Guatemalan Marlin Mine case clearly illustrate. The topic of precautionary measures, as well as other IACHR powers, therefore became an issue for discussion within the OAS.

This backlash led the OAS General Assembly to create a working group in charge of the 'Process of Reflection on the Workings of the IACHR with a view to strengthening the Inter-American Human Rights System' on 7 June 2011. The working group's mandate included reflection on the work of the IACHR '[...] with the aim of strengthening the inter-American human rights system [...]'. The group focused on matters including precautionary measures, procedural matters for individual petitions and financially strengthening the system.

The process culminated on 1 August 2013, with the IACHR reforming its own *Rules of Procedure*. The new rules substantially reformed and 'regulated' the IACHR powers when ruling on precautionary measures by clarifying the criteria to be used by the IACHR when awarding such measures. It also made more specific changes to the process of assessing individual complaints and other IACHR procedures.

This first 'strengthening process' reflects an attempt by member states to provide greater certainty and clarification to the IACHR's powers, leading to a potentially higher rate of compliance with its decisions. From another standpoint, the reform procedure can be seen as a constraint imposed by states on the system. However, viewed as either as a clarification process, or as a constraint on the system, this reform process gave a first glimpse of states pushing for a greater dialectic role between the member states and the IACHR.

Member states and the Inter-American Human Rights System

The financial crisis of the IACHR may be seen as the “condemnation of monitored States against their watchdog”. It is hard to dismiss the tension between the main goal of protecting human rights in the Americas, and the role of states as the material supporters of the Inter-American Human Rights System. The Inter-American System was created in a region in which dictatorship was a main feature and systematic human rights violations against civilians by member states were common. In this setting, state-led organized violence structured the legal responses of the Inter-American System, resulting in the perception of states as the main perpetrators of human rights in the region. This perception continues to inform the activities of both the Commission and the Inter-American Court of Human Rights.

While not intending to deny the dark past of our region, it is important to recognise that changes have, nonetheless, occurred. The region has mostly been successful in departing from its dictatorial past (with very few exceptions). International Human Rights Law has directly influenced this process of democratic transition and state-building in the region, and continues to do so. Latin American constitutions have since the 1980s incorporated comprehensive human rights charters and recognised international human rights treaties as having constitutional standing. In addition, judicial guarantees such as the *amparo*, *tutela*, *mandado de segurança*, have been incorporated within the constitutional provisions of most countries in the region. The latest development -the “*constitutional block*”- represents a new wave of the recognition of human rights and judicial activism (see Ariel E. Dulitzky’s discussion on the topic). Under this new judicial trend, domestic constitutional courts have been actively granting rights to minorities, as illustrated by the recognition of same sex marriage, indigenous rights, women’s

rights and other vulnerable groups. Of course, human rights violations have not ceased during the many democratic transitions that have taken place in the region, and states like Brazil, Guatemala, Mexico and others continue to deal with horrible problems, such as mass incarceration and subhuman conditions in prisons, as well as violations related to the structural pattern of inequality.

Crisis as opportunity?

The financial crisis of the IACHR may thus offer a valuable opportunity to reimagine the role of member states under the Inter-American Human Rights System. The precautionary measures debate shows how the IACHR continues to treat states as if they were all still undergoing democratic transitions. Beyond treating states as entities to be kept under surveillance, because of their *a priori* status of perpetrators of human rights violations, change and reform may be undertaken through dialogue and with a deeper consideration of domestic contexts. This is necessary in order to overcome the tension created between the member states and the IACHR and to secure a constructive dialogue – a dialogue that ensures the survival of the system and higher participation by member states.

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